



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

December 22, 2023

BY CM/ECF

The Hon. Jennifer L. Rochon
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Barrett and Wright, 23 Cr. 623 (JLR)*

Dear Judge Rochon:

The Government writes to respectfully request an order authorizing the disclosure of tax information in discovery pursuant to 26 U.S.C. § 6103(i)(4)(A)(i)-(ii), (D). A proposed order is enclosed for the Court's consideration.

The above-referenced Indictment charges DEWAYNE BARRETT and O'NEIL WRIGHT with offenses arising, in substance and in part, from a scheme to provide performance-enhancing drugs to athletes in international competition. Further, as charged in Count Three of the Indictment, between in or about 2020 and 2021, BARRETT used the identities of over 70 individuals to submit online applications seeking a total of over \$2.5 million through a loan program of the United States Small Business Administration, designed to provide relief to small businesses during the novel coronavirus/COVID-19 pandemic, namely, the Paycheck Protection Program, by approving government-guaranteed loans issued by commercial lenders.

As part of the Government's investigation of both BARRETT and WRIGHT, the Government obtained multiple orders for the disclosure of taxpayer return information, including the following: (1) an order dated October 13, 2022 from the Honorable Analisa Torres, sitting in Part 1, authorizing tax return information disclosure by the United States Internal Revenue Service ("IRS"); (2) an order dated November 7, 2022 from the Honorable Valerie E. Caproni, sitting in Part 1, authorizing tax return information disclosure by the New York State Department of Taxation and Finance ("DTF"); (3) an order dated March 9, 2023 from the Honorable J. Paul Oetken, sitting in Part 1, authorizing tax return information disclosure by the DTF; and (4) an order dated July 14, 2023 from the Honorable Mary Kay Vyskocil, sitting in Part 1, authorizing tax return information disclosure by the IRS (collectively, the "Tax Orders").

The Government has received several document productions from the IRS and DTF in response to the Tax Orders (the "Tax Documents"). The Tax Documents consist, approximately, of over 7,000 pages of records, including taxpayer returns.

Protected tax information may only be disclosed in limited circumstances and, if produced by the IRS to a government entity investigating a federal crime, may only be used in certain circumstances. *See* 26 U.S.C. § 6103(i)(1). Pursuant to 26 U.S.C. § 6103(i)(4)(A)(ii), one of the permitted uses is for discovery “to the extent required by order of the court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure.” *See* 26 U.S.C. § 6103(i)(4)(A)(ii). In authorizing disclosure of protected tax information under that provision, “the court shall give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in [Title 26, United States Code].” 26 U.S.C. § 6103(i)(4)(D)(ii). Pursuant to 26 U.S.C. § 6103(i)(4)(A)(i), protected tax information may also be introduced at a federal criminal trial “if the court finds that such return or taxpayer return information is probative of a matter in issue relevant in establishing the commission of a crime or the guilt or liability of a party.”

The Government seeks an order authorizing it to produce the Tax Documents in discovery. Regarding pretrial disclosure, the Government submits that the Tax Documents should be produced pursuant to Rule 16 of the Federal Rules of Criminal Procedure and that disclosure in discovery is appropriate even giving due consideration to the congressional policy favoring confidentiality of tax return information. *See* 26 U.S.C. § 6103(i)(4)(A)(ii), (D). A proposed order authorizing this use is attached to this letter as Exhibit A.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: /s/ Josiah Pertz
Josiah Pertz
Assistant United States Attorney
(212) 637-2246